

the state and national governments in reference to the enforcement of the laws of each. To save expense and travel, the Federal Government has found it convenient with the consent of the respective States to use state prisons in which to confine many of its prisoners, and the Attorney General is the agent of the Government to make the necessary contracts to carry this out. In order to render the duty thus assumed by the state governments as free from complication as possible, the actual authority over, and the discipline of, the federal prisoners while in the state prison are put in the state prison authorities. If the treatment or discipline is not satisfactory, the Attorney General can transfer them to another prison, but while they are there, they must be as amenable to the rules of the prison as are the state prisoners. But this does not have application to the procedure or the authority by which their custody may be permanently ended or temporarily suspended.

The authorities, except when special statutes make an exception, are all agreed that the fact that a defendant in an indictment is in prison serving a sentence for another crime gives him no immunity from the second prosecution. One of the best considered judgments on the subject is *Rigor v. State*, 101 Md. 465. The Supreme Court of Maryland said (p. 471):

"The penitentiary is not a place of sanctuary; and an incarcerated convict ought not to enjoy an immunity from trial merely because he is undergoing punishment on some earlier judgment of guilt."

Delay in the trial of accused persons greatly aids the guilty to escape because witnesses disappear, their memory becomes less accurate and time lessens the vigor of officials charged with the duty of prosecution. If a plea of guilty and imprisonment for one offence is to postpone trial on many others, it furnishes the criminal an opportunity to avoid the full expiation of his crimes. These

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considerations have led most courts to take the same view as that expressed in the case just cited. Other cases are *State v. Wilson*, 38 Conn. 126; *Thomas v. People*, 67 N. Y. 218, 225; *Peri v. People*, 65 Ill. 17; *Commonwealth v. Ramunno*, 219 Pa. St. 204; *Kennedy v. Howard*, 74 Ind. 87; *Singleton v. State*, 71 Miss. 782; *Huffaker v. Commonwealth*, 124 Ky. 115; *Clifford v. Dryden*, 31 Wash. 545; *People v. Flynn*, 7 Utah, 378; *Ex parte Ryan*, 10 Nev. 261; *State v. Keefe*, 17 Wyo. 227, 252; *Re Wetton*, 1 Crompt. & J. 459; *Regina v. Day*, 3 F. & F. 526.

It is objected that many of these cases relate to crimes committed in prison during service of a sentence. The Maryland case did not, nor did some of the others. But the difference suggested is not one in principle. If incarceration is a reason for not trying a prisoner, it applies whenever and wherever the crime is committed. The unsoundness of the view is merely more apparent when a prisoner murders his warden, than when he is brought before the court for a crime committed before his imprisonment. It is the *reductio ad absurdum* of the plea.

Nor, if that be here important, is there any difficulty in respect to the execution of a second sentence. It can be made to commence when the first terminates. *Kite v. Commonwealth*, 11 Metc. 581, 585, an opinion by Chief Justice Shaw; *Ex parte Ryan*, 10 Nev. 261, 264; *Thomas v. People*, 67 N. Y. 218, 226.

But it is argued that when the prisoner is produced in the Superior Court, he is still in the custody and jurisdiction of the United States, and that the state court can not try one not within its jurisdiction. This is a refinement which if entertained would merely obstruct justice. The prisoner when produced in the Superior Court in compliance with its writ is personally present. He has full opportunity to make his defense exactly as if he were brought before the court by its own officer. *State v.*

*Wilson*, 38 Conn. 126, 136. The trial court is given all the jurisdiction needed to try and hear him by the consent of the United States, which only insists on his being kept safely from escape or from danger under the eye and control of its officer. This arrangement of comity between the two governments works in no way to the prejudice of the prisoner or of either sovereignty.

The question must be answered in the affirmative.

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